

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

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| UNITED STATES OF AMERICA | : | |
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| v. | : | |
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| JAMES THOMAS MCBRIDE | : | Case No: 1:14CR175 |
| | : | Hon. Anthony Trenga |
| | : | Sentencing: Nov. 21, 2014 |
| | : | |

JAMES THOMAS MCBRIDE'S SENTENCING MEMORANDUM

COMES NOW, JAMES THOMAS MCBRIDE, by and through counsel, Jeffrey Zimmerman, in accordance with 18 U.S.C § 3553(a) and the Guidelines Manual (Nov. 1, 2014 ed.) and respectfully submits his Sentencing Memorandum. Defendant respectfully submits that a sentence of 15 months is fair, just, and warranted in this case.

I. OBJECTIONS TO THE PSI AND GUIDELINES SENTENCING RANGE

Mr. McBride has received and reviewed the Presentence Investigation Report (PSI) and has noted his objections are noted in the Addendum. *See Presentence Investigation Report* at Addendum A-1 [hereinafter PSI].

Mr. McBride objects to being identified as a member of a gang. *See* PSI at 3 (“Gang Affiliation: Identified member of sovereign movement”); *see also* Addendum at A-1. The evidence at trial was that he created an organization called Divine Province, from which the conduct at issue took place. McBride does not identify himself as a “sovereign citizen” or as having any affiliation with the “sovereign citizen movement.” Moreover, there was never any allegation of violence or other such gang-like activity involving Divine Province. To the

contrary, the testimony from government witnesses involved in Divine Province -- such as Sharyn Brown and Rob Marquez -- is that Divine Province was fundamentally peaceful and spiritual organization. Even according to the government, this organization engages in fraud, not violence. Mr. McBride and Divine Province never sought or planned any violence and there has never been even any allegation otherwise. To consider him a gang member, which would likely result in much harder time, is without a basis and fundamentally unfair.

McBride also objects to the enhancement for use of an authentication feature, under §2B1.1(11)(A)(ii). *See* PSI at 7 ¶26; Addendum at A-2. According to the Fourth Circuit: “Under § 1028(d)(1), an ‘authentication feature’ is defined as a feature used by the ‘issuing authority’ to determine whether the document is counterfeit. Pursuant to §1028(d)(6), an ‘issuing authority’ is limited specifically to governmental entities. See also 18 U.S.C.A. § 1028(d)(4) (defining ‘false identification document’ as a false version of a document used for identification that appears to be issued by a governmental agency.”

United States v. Cline, 286 Fed. Appx. 817, 820 n.2 (4th Cir. 2008). The Fourth Circuit expressly rejected the notion that the term “authentication feature” would apply to serial numbers and other authentication features used on the identification documents of private clubs and organizations. *See Cline*, 286 Fed. Appx. at 820. Divine Province is not a governmental entity and “authentication feature” as used by an “issuing authority” as defined in 18 U.S.C. § 1028 is “limited specifically to governmental entities.” Consequently, this enhancement does not apply.

Absent this inapplicable enhancement, the resulting Total Offense Level is 12 at a Criminal History Category III, resulting in an advisory sentencing range of 15-21 months. A low end sentence of 15 months is warranted in this case.

II. A SENTENCE OF 15 MONTHS INCARCERATION WOULD BE SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO COMPLY WITH THE PURPOSES OF SENTENCING SET FORTH IN 18 U.S.C. §3553(a)

James Thomas McBride, 60 years old, was born on February 6, 1954. PSI at 14 ¶ 52. A sentence of 15 months is sufficient in this matter. The government suggests an upward departure from the advisory guidelines for understatement of criminal history and/or an upward variance to a period of incarceration of 36 months. *See* Government's Position on Sentencing (ECF No. 121) (filed 11/13/14) [hereinafter US Position] at 7. The arguments for such an increase are unavailing.

The prosecution notes that Mr. McBride has served additional periods of incarceration for supervised release violations that did not increase his criminal history. *Id.* There is no dispute that these were properly scored. Rather, the government suggests that McBride's "relatively low criminal history score is due to the absence of opportunity to commit additional crimes (due to his extended incarcerations) and not due to the absence of criminal disposition." *Id.* (parenthetical in original). This is a rather incredible basis for an increased sentence. The government is asking the Court to sentence Mr. McBride for crimes he did not have the "opportunity" to commit, to sentence him based on some assumed "disposition" in addition to being sentenced for his convictions. Essentially, this comes down to the argument that the longer a defendant has served in prison, the longer a future sentence should be because of imagined crimes that he would have otherwise supposedly committed. This is not a proper basis for either an upward departure or an upward variance.

III. CONCLUSION

A sentence of 15 months, the low end of a corrected advisory guidelines range or a downward variance from the current range, would be sufficient, but not greater than necessary, to comply with the purposes of sentencing set forth in 18 U.S.C. §3553(a).

Respectfully Submitted,

JAMES THOMAS MCBRIDE
By Counsel

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2014, a true and accurate copy of the foregoing was electronically filed and served via the Court's CM/ECF system to all counsel of record. In addition, a copy was emailed to United States Probation Officer Eric C. Olson.

/s/
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